84-5059

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ex rel., PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

CAUSE NO. _____

AFFIDAVIT OF MAILING AND CERTIFICATE OF SERVICE

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that on this 5th day of July, 1984, I served a true and correct xerox copy of the following-listed documents, by first-class, postage prepaid, first-class, United States Mail, upon the Honorable Linley Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana 46204:

(a) Motion for Leave to Proceed in Forma Pauperis and Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis;

(b) Motion for Appointment of Counsel;

(c) Petition for A Writ of Ceritorari to the Indiana Court of Appeals and Appendix; and,

(d) Affidavit of Mailing and Certificate of Service.

I further state that on the above mentioned date, I filed one original type written copy of each document listed above with the Clerk of the United States Supreme Court, via certified, postage prepaid, return-receipt requested, United States Mail.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5 day of July, 1984.

Notary Public

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

County of Residence

IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

ORIGINAL

UNITED STATES OF AMERICA ex rel.,
PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE
INDIANA COURT OF APPEALS

Patrick Ramirez
Petitioner pro se
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Greencastle, Indiana 46135-0076

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QUESTION PRESENTED FOR REVIEW

Does a state court have jurisdiction to try a defendant in direct violation of Article V, Subsection (d), of the Interstate Agreement on Detainers for crimes which were not contained in the untried informations, and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the defendant, under Article IV of the Interstate Agreement on Detainers?[1/]

1/ 18 U.S.C.App.

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

UNITED STATES OF AMERICA ex rel.,
PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS

The petitioner, Patrick Ramirez, respectfully prays that a writ of certiorari issue to review the judgment of the Indiana Court of Appeals entered herein on the 26th day of October, 1983.

OPINION BELOW

The Indiana Court of Appeals entered its Opinion affirming the trial court's judgment denying Petitioner's pretrial motion to dismiss on the 26th day of October, 1983. A copy of the Opinion is attached hereto as Appendix A, and is reported at 455 N.E.2d 609.

Following the affirmance of the trial court's denial of Petitioner's pretrial motion to dismiss, Petitioner then timely filed a petition for rehearing with the Indiana Court

of Appeals. The petition for rehearing was denied by that court, without written opinion, on the 1st day of February, 1984. A copy of the Indiana Court of Appeals' notification that the petition for rehearing had been denied is attached hereto as Appendix B.

Following the denial of rehearing in this cause, Petitioner then timely filed a petition to transfer this cause with the Supreme Court of Indiana. The petition to transfer was denied by the Indiana Supreme Court, without written opinion, on the 11th day of May, 1984. A copy of the Indiana Supreme Court's notification that the petition to transfer had been denied is attached hereto as Appendix C.

JURISDICTION

This case originated in the Howard County (Indiana) Superior Court, NO. II. After conviction by a jury of three counts of Dealing in a Schedule IV Controlled Substance on the 17th day of May, 1982 (date of conviction), Petitioner appealed to the Indiana Court of Appeals. On the 26th day of October, 1983, that court affirmed Petitioner's convictions and the trial court's judgment in all respects, except for the amount of good time credit to which the Petitioner was credited.[2/] With respect to the good time credit, which is not at issue in this proceeding, the Indiana Court of Appeals remanded this case to the trial court for recalculation and an appropriate award of credit.

2/ The written Opinion of the Indiana Court of Appeals is attached hereto under Appendix A.

Petitioner thereafter filed a timely petition for rehearing with the Indiana Court of Appeals, and the petition for rehearing was summarily denied by that court on the 1st day of February, 1984.[3] Following the denial of rehearing, Petitioner then timely filed a petition to transfer this cause to the Supreme Court of Indiana, which was denied by that court without written opinion on the 11th day of May, 1984.[4] Petitioner's "Verified Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the Indiana Court of Appeals" were filed within sixty (60) days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

STATUTORY PROVISIONS INVOLVED

18 U.S.C.App., Article V, Subsection (d):

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge arising out of the same transaction. Except for his attendance in court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. West's United States Code Annotated, Supplementary Pamphlet 1969 to 1983, p. 449.

3/ The Indiana Court of Appeals' summary denial of the petition for rehearing is attached hereto as Apendix B.

4/ The Indiana Supreme Court's summary denial of the petition to transfer is attached hereto as Appendix C.

INDIANA CODE 35-2.1-2-4*, Article V, subsection (d)

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of (sic) complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a s able jail or other facility regularly used for persons awaiting prosecution. West's Annotated Indiana Code.

STATEMENT OF THE CASE

On March 20, 1979, Petitioner was charged by information in the Howard County* (Indiana) Superior Court Number II, under Cause Number 424, with three counts of dealing in a schedule IV controlled substance (Dizepan), class C felonies. (R. 7-13).[5/] The incidents on which these charges were based occurred on January 28, 1979, March 9, 1979, and March 12, 1979. Ibid. Then, by a two-count information, dated February 6, 1980, Petitioner was charged in the Howard Superior Court Number II, under Cause Number 470, with two counts of dealing in marijuana, class D

*Effective September 1st, 1982, this statute was reassigned to I.C. 35-33-10-4.

5/ The abbreviation (R. _____) refers to the state court record.

felonies. (R. 557). These later crimes were based on incidents which occurred on December 17, 1979, and December 21, 1979. Ibid.

On March 16, 1981, while Petitioner was serving a sentence in the State of Michigan for dealing in cocaine, the prosecuting attorney for the 62nd Judicial District, Howard County (Indiana), mailed the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause Number 470, dealing in marijuana, requesting the informations be filed as a detainer against Petitioner. (R. 556-558; 1128-1132). On June 23, 1981, the prosecutor followed upon by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Petitioner was charged ... Howard Superior Court Number II with three counts of dealing in marijuana under Cause Number 424.[6] (R. 1128-1132).

The Michigan warden notified Petitioner by Michigan Department of Correction Agreement on Detainers Form I that an untried Howard County (Indiana) information for two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. (R. 557-558). On March 19, 1981, after Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County (Indiana) to stand trial on two counts of dealing in marijuana, class D felonies. (R. 559; 567).

On July 21, 1981, Petitioner was returned to Howard County (Indiana). (R. 556; 1132). After his return to Howard County, Petitioner discovered for the first time that the prosecutor intended to also prosecute the Petitioner on three counts of dealing in a schedule IV controlled

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[6] Michigan is a party state to the Interstate Agreement on Detainers and the Agreement is condified in Michigan as Mich. Comp. Laws Annot. §§780.601 to 780.608 (1982)

substance, class C felonies, under Cause Number 424. (R. 524-531). Thereupon, Petitioner made two pro se attempts to introduce into evidence with the trial court the Interstate Agreement on Detainers' forms to show the court that he had agreed to voluntarily return to Indiana for the sole purpose of reaching a final disposition, at the prosecutor's request, on two counts of dealing in marijuana under Cause Number 470. (R. 535; 546).

Subsequently thereto, Petitioner retained private counsel and on January 18, 1982, filed a timely motion to dismiss the charges in Cause Number 424.[2/] It was in the motion to dismiss that Petitioner first raised the question sought to be reviewed in this proceeding. Petitioner contended that the charges in Cause Number 424 should be dismissed because the Howard County (Indiana) prosecutor sought to prosecute him on criminal charges for which no detainer had been lodged against him and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer for which temporary custody of the Petitioner was sought and granted from Michigan authorities under Cause Number 470. (R. 210-216.)

The trial court held a hearing on Petitioner's motion to dismiss on January 25, 1982, at which time evidence was submitted to show that Petitioner had not been notified of the prosecution's intent to try him on the charges under Cause Number 424 and that if he had known of this intention he would not have voluntarily agreed to the return but, instead, would have invoked his right to a pre-transfer hearing to contest his return, as guaranteed him under

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2/ The motion to dismiss is attached hereto as Appendix D.

Article IV(d) of the Insterstate Agreement on Detainers. (R. 561-582). On January 26, 1982, the trial court denied Petitioner's motion to dismiss without comment or written opinion. (R. 219).

On May 11, 1982, Petitioner's jury trial began. At the outset of the jury trial, Petitioner renewed his motion to dismiss and again the motion was denied without comment or written opinion. (R. 228). The jury trial proceeded, and on May 17, 1982, Petitioner was adjudged guilty by the jury on all three counts of dealing in a schedule IV controlled substance under Cause Number 424. (R. 264-267). Consequently, on June 8, 1982, Petitioner was sentenced to prison for a period of five years on each count, to be serve concurrently with one another, but consecutive to the sentences he received for the two counts of dealing in marijuana under Cause Number 470.[8/]

On August 10, 1982, Petitioner then filed a timely motion to correct errors in which he alleged, inter alia, that the trial court had committed error in overruling his pretrial motion to dismiss. (R. 433-436). The trial court denied Petitioner's timely filed motion to correct errors, without written opinion, on October 26, 1982. (R. 445).

Following the denial of Petitioner's motion to correct errors, Petitioner pursued a timely pro se appeal to the Court of Appeals of Indiana. In his direct appeal, Petitioner argued, inter alia, that the trial court had committed error in overruling his pretrial motion to

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8/ Petitioner pleaded guilty to the two counts of dealing in marijuana under Cause Number 470. These are the charges for which a detainer had been lodged against the Petitioner and his return from the Michigan State Prison had been effectuated by the Howard County (Indiana) prosecutor. These convictions are not at issue here.

dismiss. (See: Brief of the Appellant, filed in the Indiana Court of Appeals under Cause Number PS 518, pp. 49-56). While the Indiana Court of Appeals did find that Petitioner's presence in Indiana on Cause Number 424 for the three counts of dealing in a schedule IV controlled substance had been secured outside the terms of the Interstate Agreement on Detainers (App., at A-7),[2/] relying upon this Court's holdings in Ker v. Illinois, 119 U.S. 436 and Frisbie v. Collins, 342 U.S. 519, the Indiana Court of Appeals affirmed the trial court's denial of Petitioner's pretrial motion to dismiss on the basis that jurisdiction over Petitioner's "person was not defeated by the manner in which he was brought before the court to stand trial on the charges in Cause 424." (App., at A-9).

The federal question presented herein was timely raised at each stage of the state court proceedings; therefore, this Court has jurisdiction to review the judgment on a writ of certiorari.

REASON FOR GRANTING THE WRIT

ARTICLE V, SUBSECTION (d), OF THE INTERSTATE AGREEMENT ON DETAINERS LIMITS THE PROSECUTION OF A CRIMINAL DEFENDANT, WHOM HAS BEEN DELIVERED INTO TEMPORARY CUSTODY OF A DEMANING PARTY STATE PURSUANT TO ARTICLE IV OF THE AGREEMENT, TO ONLY BEING PROSECUTED ON CHARGES WHICH FORM THE BASIS OF THE DETAINER OR ARISE OUT OF THE SAME TRANSACTION AS DID THE CHARGES UPON WHICH THE DETAINER WAS BASED AND FOR WHICH TEMPORARY CUSTODY WAS GRANTED, A REQUIREMENT IN FEDERAL LAW THAT DID NOT EXIST AT THE TIME THIS COURT DECIDED KER v. ILLINOIS AND FRISBIE v. COLLINS.

This petition raises an interesting and important question of federal law, which has not heretofore been answered by this Court, viz:

2/ The abbreviation "(App., at A-___)" refers to the Appendix attached hereto.

> Does a state court have jurisdiction to try a defendant in direct violation of Article V, Subsection (d), of the Interstate Agreement on Detainers for crimes which were not contained in the untried informations, and which did not arise out of the same transaction as did the criminal charges which formed the basis of the detainer used by state prosecuting authorities to obtain temporary custody of the defendant, under Article IV of the Interstate Agreement on Detainers?

Petitioner represents that under the unique circumstances of this case, and in light of the importance of the federal question raised herein to both criminal defendants and prosecuting authorities, this Court should invoke its judicial discretion and review the Indiana Court of Appeals' answer to the question given below. Rule 17.1(c) of the United States Supreme Court.

The question raised in this petition was one of first impression in the State of Indiana. (App., at A- 8). While it is true that the question has been raised by criminal defendants in other states,[10] diligent research has failed to reveal any truly factually similar cases wherein the question raised in this case has been squarely addressed by any court. [11] Research has not disclosed

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10/ In its opinion (App., at A-), the Indiana Court of appeals cited several cases which purportedly have factual situation similar to that of this Petitioner, e.g. Saunderr v. State, (1978) Del. 397 A.2d 548; State v. Casuso, (1977) Iowa, 253 N.W.2d 919; People v. Browning, (1981) 108 Mich. App. 281, 310 N.W.2d 365; Commonwealth v. Frison, (1981) 301 Pa.Super. 498, 448 A.2d 18; State v. Tyson, (1980) Tenn.Crim.App., 603 S.W.2d 748; Bokemeyer v. State, (1981) Tex.Crim.App., 624 S.W.2d 909; and, Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091. However, a review of these cases show that the same question as is raised herein was raised only in State v. Casus, People v. Browning, State v. Tyson, Bokemeyer v. State, and Brown v. District Court.

11/ In State v. Casuso the defendant was tried for additional crimes he committed while in temporary custody under the Interstate Agreement on Detainers. In People v. Browning,

(Footnote continued on next page)

any case in which a federal court has passed upon the question sought to be reviewed in this proceeding. Thus not only is the question raised in this petition one of first impression for this Court, as it was for the Indiana Court of Appeals, but also there is a dire need for this Court to answer the question in order to resolve the controversy and to set forth guidelines to be followed by the nation's lower courts in dealing with the question when it arises in future cases.

In the case of Cuyler v. Adams, 449 U.S. 443, 101 S.Ct. 703, 66 L.Ed.2d 641, this Court held that interpretation of the Interstate Agreement on Detainers presents a question of federal law and that Article IX of the Agreement requires the courts to give liberal construction to the Agreement in order to effectuate the purpose of the Act, that is: "to protect prisoners against whom detainers are outstanding." Id., at 101 S.Ct. 712. In Cuyler v. Adams this Court clearly

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FOOTNOTE NUMBER 11 CONTINUED:

the Michigan Court of Appeals held that the defendant in that case waived the issue by not properly preserving the question raised in the lower court on appeal. However, although the Court did not address the question in Browning, there is dictum in that case to indicate that the court may have ruled that a violation of Article V(d) of the Agreement required dismissal of the criminal charges in a case, such as here, where the question has been properly preserved for appeallate review. 306 N.W.2d at 333-334. In State v. Tyson, the court held that since the questioned criminal charge involved a habitual offender sentence and was based upon the crime for which the defendant was given into temporary custody, it arose out of the same transaction and there was no violation of Article V(d). In Bokemeyer v. State, the question charge involved a re-indictment on the same charge for which the defendant was given into temporary custody. The Texas Criminal Court of Appeals refused to hold that Article V(d) of the Agreement prevented a defendant from being tried upon a re-indictment for the same crime which he was given into temporary custody. Finally, in Brown v. District Court, the questioned charges involved criminal cases which were pending in another county within the state in which the defendant was given into temporary custody. The original county, into whose custody the defendant was given, had properly followed the requirements of the Interstate Agreement on Detainers. The Colorado Supreme Court held that Article V(D) of the Agreement does not require every county in a demanding state, desiring to prosecute a defendant, to comply separately with the provisions of the Interstate Agreement on Detainers. The court in Brown v.

(Footnote continued on next page)

distinguished temporary custody situations under Articles III and IV of the Agreement by noting that those prisoners whom initiate their own transfers under Article III waive various procedural rights guaranteed to them while prisoners who are transferred pursuant to Article IV, do not.[12/] The specific right involved in Cuyler v. Adams was the right of a prisoner who had been transferred pursuant to Article IV of the Agreement to have a pre-transfer hearing in order to contest his delivery into temporary custody of a demanding party state. This Court held, inter alia, that ". . .we conclude as a matter of federal law that prisoners transferred pursuant to the provisions of the Agreement are not required to forfeit any pre-exisiting rights they may have under state or federal law to challenge their transfer to the receiving state. . ." Id., at 101 S.Ct. 712. While this Court did not address the specific provisions involved in the case at bar of the Interstate Agreement on Detainers in Cuyler v. Adams, the Court did establish several factors which are relevant here. First, the Court made it clear that interpretation of the Agreement is a matter of federal law. Secondly, the Court established that the Agreement was to be given liberal construction in favor of the protection of prisoners against whom detainers have been lodged. And,

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FOOTNOTE NUMBER 11 CONTINUED:

District Court adopted the position that the Interstate Agreement on Detainers was "generally designed to benefit the states, not the prisoners." 571 P.2d 1093. None of these circumstances are present here and the specific question was timely raised at all levels of the state court proceedings in this case.

12/ The Petitioner in this case was transferred into temporary custody pursuant to Article IV of the Agreement upon the initiative and request of the Howard County (Indiana) prosecutor.

lastly, that prisoners cannot be compelled to unwittingly forfeit any procedural rights granted to them under either state or federal law to challenge their transfer to the receiving state.

The relevant portion of the Interstate Agreement on Detainers in the case at bar is Article V, subsection (d), and provides as follows:

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any **other charge arising out of the same** transaction. Except for his attendance in court and while being transported to or from any place at which his presence may be required, the prisone shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution. 18 U.S.C.App., West's United States Code Annotated; I.C. 35-2.1-2-4, West's Annotated Indiana Code.

In the present case, the Indiana Court of Appeals correctly found that Petitioner's presence in Howard County (Indiana) on the three counts of dealing in a schedule IV controlled substance, under Cause Number 424, had been secured outside the terms of the Interstate Agreement on Detainers. (App., at A-7). However, the Indiana Court of Appeals' legal conclusion that the trial court did not commit error by overruling Petitioner's pretrial motion to dismiss, although Petitioner's return had been obtained in violation of Article V(d) of the Agreement, because jurisdiction over the Petitioner's "person was not defeated by the manner in which he was brought before the court to stan trial on the charges in Cause 424," is erroneous.

The Indiana Court of Appeals' legal conclusion was based upon this Court's holdings in Ker v. Illinois, 119 U.S. 436 and Frisbie v. Collins, 342 U.S. 519. Essentially, in those case this Court held that the power of a court to try a person for a crime is not impaired by the fact that he has been brought within the court's jurisdiction by way of

forcible abduction. Research reveals that this rule was first enunciated in 1886 in Ker v. Illinois and that the last time this Court has actually reexamined the rule was in 1952 when, in Frisbie v. Collins, the Court granted certiorari to determine whether the Federal Kidnaping Act (47 St. 326, as amended 18 U.S.C. §1201) had changed the rule.[13/] During the Court's reexamination of the rule in Frisbie v. Collins, 72 S.Ct. 511-512, 342 U.S. 522-523, this Court observed:

> This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, 7 S.Ct. 225, 239, 30 L.Ed. 421, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction." No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisdfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a cou to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will.
>
> Despite our prior decisions, the Court of Appeals, relying on the Federal Kidnaping Act, held that respondent was entitled to the writ if he could

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13/ The Court has, however, more recently relied upon the rule in a variety of contexts, e.g., Gernstein v. Pugh, 420 U.S. 1 95 S.Ct, 854, 43 L.Ed.2d 54 (1975) (question was whether a person arrested and held for trial under a prosecutor's information is constitutionally entitled to a judicial determination of probable cause for pretrial restraint of liberty); Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976) (question was whether a federal court should consider, in ruling on a petition for federal habeas corpus relief filed by a state prisoner, a claim that evidence obtained by an unconstitutional search and seizure was introduced at his trial, when he has previosuly been afforded an opportunity for full and fair litigation of his claim in the state courts); Rose v. Mitchell, 443 U.S. 545, 99 S.Ct. 2993, 61 L.Ed.2d 739 (1979) (question was whether a federal court, as a matter of policy, should hear claims in a fede al habeas corpus proceeding of racial discrimination in the selection of a grand jury foreman in light of Stone v. Powell); and United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980) (question was whether, under the circumstances of that case, an in-court identification of the accused by the victim should be suppressed as the fruit of the defendent's unlawful [illegible]est).

> prove the facts he alleged. The Court thought that to hold otherwise after the passage of the Kidnaping Act "would in practicle effect lend encouragement to the commission of criminal acts by those sworn to enforce the law. (189 F.2d 468) In considering the law of our prior cases has been changed by the Federal Kidnaping Act, we assume, without intimating that it is so, that the Michigan officers would have violated it if the facts are as alleged. This Act prescribes in some detail the severe sanctions Congress wanted it to have. Persons who have violated it can be imprisoned for a term of years or for life; under some circumstances violators can be given the death sentence. We think the Act cannot fairly be construed so as to add to the list of sanctions detailed a sanction barring a state from prosecuting persons wrongfully brought to it by its officers. It may be that Congress could add such a sanction. We cannot.

Petitioner represents that Congress, by including Article V(d) in the Interstate Agreement on Detainers, sought to change the above antiquated rule to comport with the modern trend of our criminal justice system to protect prisoners from the heinous abuses which prevailed during the Ker-Frisbie era. The language in Article V(d) is mandatory, clear, unambiguous, and provides is pertinent part that:

> The temporary custody referred to in this agreement shall only be for the purpose of permitting prosecution on the charge or charges in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. . . (Emphasis Added). 18 U.S.C.App.

The words of Congress in Article V(d) of the Interstate Agreement on Detainers could be paraphrased for the case at bar. Congress could have written:

> If the Howard County (Indiana) prosecuting attorney wants to return Petitioner Ramirez to the State of Indiana, pursuant to Article IV of the Interstate Agreement on Detainers, the prosecutor shall only prosecute Ramirez for the charge or charges contained in the information which forms the basis of the detainer lodged against him with Michigan authorities or for any other crimes arising out of the same transaction as do the crimes which form the basis of the detainer.

By enacting the Interstate Agreement on Detainers, Congress did in fact proscribe that which the Federal Kidnaping Act (18 U.S.C. §1201) did not proscribed during the Frisbie era: Congress limited the prosecution of a criminal defendant, whom is delivered into temporary custody of a party state to the Agreement, to only being prosecuted on crimes named in the charging instrument "which form the basis of the detainer or detainers or. . .on any other charge or charges arising out of the same transaction. If there has ever been an Act passed by Congress which flies directly in face of a rule announced by this Court, it is surely Article V(d) of the Interstate Agreement on Detainers.

The Indiana Court of Appeals found, and the state court record reveals, the crimes involved in this case were not contained in the information which formed the basis of the detainer herein and that the charges did not arise out of the same transaction. Applying the liberal construction required by Article IX of the Agreement and Cuyler v. Adams to Article V(d), the only conclusion that can be reached in this case is that the trial court lacked jurisdiction to try Petition for the crimes in this cause. Since Indiana chose to become a party state to the Interstate Agreement on Detainers, the State is bound by its terms. e.g. Bush v. Muncie, 659 F.2d 402 (4th Cir. 1981), cert. denied, ___U.S.___, 102 S.Ct. 1259, ___L.Ed.2d ___. Article V, Subsection (d) of the Agreement, prohibited the State of Indiana from trying Petitioner for any charge unless ". . . the charge or charges. . .form(ed) the basis of the detainer. . .or for any other charge. . .arising out of the same transaction. . ." The three dealing in a schedule IV controlled substance class C felonies in this cause do not fall within purview of this mandate. It is because of flagrant violation of federal law that this Court should

reexamine the antiquated rule announced in Ker v. Illinois, which was reaffirmed in Frisbie v. Collins, and which was relied upon by the Indiana Court of Appeals to affirm the denial of Petitioner Ramirez's timely filed pretrial motion to dismiss in this case. In the interests of justice, the Court should determine whether Congress has changed the rule by enacting Article V(d) of the Insterstate Agreement on Detainers.

CONCLUSION

For the foregoing reasons, Petitioner Patrick Ramirez respectfully prays that a writ of certiorari issue to review the Judgment of the Indiana Court of Appeals.

Respectfully submitted,

DATED THIS 5th DAY OF July, 1984.

Patrick Ramirez
Petitioner pro se
DOC#24767
Indiana State Farm
P.O. Box 76
Greencastle, Indiana 46135-0076

STATE OF INDIANA)
) SS:
COUNTY OF PUTMAN)

VERIFICATION

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that: I am the petitioner in the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS; I have read said petition and affixed my signature thereunto; and, the matters contained therein are true and correct to the best of my knowledge and belief.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5th day of July, 1984.

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

Notary Public

Norman
County of Residence

FOR

[redacted]

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219 State House
Indianapolis, Indiana 46204

IN THE

COURT OF APPEALS OF INDIANA

SECOND DISTRICT

PATRICK RAMIREZ, Appellant (Defendant Below) v. STATE OF INDIANA Appellee (Plaintiff Below)	)	NO. PS 518

APPEAL FROM THE HOWARD SUPERIOR COURT, NO. II
THE HONORABLE CARL E. VAN DORN, JUDGE
CAUSE NO. 424 & 470

SHIELDS, J.

Patrick Ramirez (Ramirez) appeals pro se his convictions under I.C. 35-48-4-3 (Burns Code Ed., Repl. 1979) of dealing in a schedule IV controlled substance. Ramirez raises the following issues:

1) whether the trial court erred in denying his pretrial motion to dismiss the information for failure to comply with the agreement on detainers (Agreement), I.C. 35-2.1-2-4 (Burns Code Ed., Repl. 1979)(repealed 1982); recodified as I.C. 35-33-10-4 (Burns Code Ed., Supp. 1982),
2) whether there was sufficient evidence to support his convictions;
3) whether the trial court committed fundamental error by ordering Ramirez to serve his sentences consecutively; and
4) whether the court erred in calculating his credit time for the days he spent confined awaiting trial sentencing.

On March 20, 1979, Ramirez was charged by information, Cause 424, with three counts of dealing in a schedule IV controlled substance, a class C felony. The incidents on which the charges were based occurred January 28, 1979, March 9, 1979, and March 12, 1979. Then, by a two-count information dated February 6, 1980, Ramirez was charged under Cause 470 with dealing in marijuana, a class D felony,

on December 17, 1979 and December 21, 1979. This appeal concerns Cause 424.

The record reveals Ramirez was serving a sentence in March 1981 in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana mailed the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, requesting the information be filed as a detainer against Ramirez. On June 23, 1981, the prosecutor followed up by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Ramirez was charged in Howard Superior Court II with three counts of dealing in marijuana under Cause 424.

The Michigan warden notified Ramirez by Michigan Department of Corrections Agreement on Detainers Form I that an untried Howard County, Indiana information in two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. After he was informed of the provisions of the interstate agreement on detainers, Ramirez signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana.

I.

Ramirez' first issue presents two questions: 1) whether his presence in Indiana was obtained under the Agreement, I.C. 35-2.1-2-4, on the basis of Cause 424, three counts of dealing

in a controlled substance, and 2) if not, what remedy exists for the State's failure to follow the provisions of the Agreement.

The Agreement is a uniform law enacted by the majority of the states and the federal government.[1/] Its purpose is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and informations against prisoners. I.C. 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also provides a method by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The State's interest protected by the Agreement, having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions, is obvious. The Agreement, however, also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. I.C. 35-2.1-2-4, Article 1.

1/ The Agreement is codified in Michigan as Mich. Comp. Laws Annot. § 780.601 to .608 (1982).

Pursuant to the Agreement, after a detainer is filed,[2/] the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement provides a thirty-day period shall pass after receipt of the request before the request may be honored. The Agreement further provides,

> "[T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor withing thirty [30] days, and to contest the legality of his delivery."

I.C. 35-2.1-2-4, Article 9(7).

By mandate of the United States Supreme Court, unless waived, the imprisoned defendant must be afforded an extradition-type hearing before the request for temporary custody is honored. Cuyler v. Adams, (1981) 449 U.S. 433. Further, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms

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2/ "Detainer" is not defined by the Agreement. However, a detainer has been described as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." Webb v. State, (1982) Ind., 437 N.E.2d 1330, 1331 (quoting S.Rep.No. 21-1356, 91st Cong., 2d Sess. 2 (1970)).

the basis of the detainer. I.C. 35-2.1-2-4, Article 5(2).

The State contends Ramirez' presence in Indiana was secured under the Agreement on both Cause 424, three counts of dealing in a schedule IV controlled substance and Cause 470, two counts of dealing in marijuana. We disagree.

The certified copy of the two-count information in Cause 470 transmitted to the Michigan authorities was undoubtedly sufficient to serve as a detainer as to that cause. The controversy involves the document subsequently transmitted which incorrectly described the outstanding charge as a three-count information for dealing in marijuana under Cause 424. This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana - two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.

Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the

terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.

Ramirez' contention on appeal, as in his motion, is the information in Cause 424 should be dismissed because of the State's violation of the provision of the Agreement providing:

> "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other charge or charges arising out of the same transaction."

I.C. 35-2.1-2-4, Article 5(d). Therefore, Ramirez contends, because the State was unable under the Agreement to try him on a charge not forming the basis of a detainer or arising out of the same transaction, the information in Cause 424 must be dismissed and his conviction reversed.

The interpretation of this provision of the Agreement is an issue of first impression in Indiana.[3/] For the purposes

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3/ Ramirez has directed us to, and independent research has revealed, no Indiana cases concerning this particular provision of the Agreement. We do note the presence of Indiana cases holding violations of the Agreement's provisions designed for the protection of the imprisoned defendant are waived unless timely raised at the trial level. Scrivener v. State, (1982) Ind., 441 N.E.2d 954 (speedy trial, Article 3(a);) Webb v. State, (1982) Ind., 437 N.E.2d 1330 (return without trial, Article 4(e)).

Footnote continued on page 8.

of this discussion, we assume, as Ramirez asserts, that the provision was included in the Agreement to protect imprisoned defendants in his position from unwittingly consenting to be returned to another jurisdiction for trial on minor charges only to be tried, once returned, on far more serious outstanding charges.

Nevertheless, there is no merit to Ramirez' argument the information must be dismissed. Jurisdiction over Ramirez' person was not defeated by the manner in which he was brought before the court to stand trial on the charges in Cause 424. The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him. As

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Footnote 3 continued.

Our research has uncovered cases in other jurisdictions having factual situations similar to Ramirez'. See Saunders v. State, (1978) Del., 397 A.2d 548; State v. Casuso, (1977) Iowa, 253 N.W.2d 919 (crime committed while in temporary custody under Agreement); People v. Browning, (1981) 108 Mich. App. 281, 310 N.W.2d 365 (waived because not raised before or during trial); Commonwealth v. Frison, (1981) 301 Pa.Super. 498, 448 A.2d 18 (defendant's presence at his request); State v. Tyson, (1980) Tenn. Crim.App., 603 S.W.2d 748 (habitual criminal charge "arising out of same transaction"); Bokemeyer v. State, (1981) Tex.Crim.App., 624 S.W.2d 909 (reindictment of same charge). However, in few cases has the substantive issue been before the court as it is here. See Brown v. District Court, (1977) 194 Col. 1225, 571 P.2d 1091.

stated by the United States Supreme Court in Firsbie v. Collins, (1952) 342 U.S. 519, 522 (footnote omitted).

> "This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases."

We acknowledge one of the purposes of the Agreement, affording imprisoned individuals certain statutory rights, is not served where a jurisdiction prosecutes an individual outside the Agreement. Nevertheless, we fail to see how the other avowed purpose of the Agreement, providing a simplified procedure whereby individuals imprisoned in one jurisdiction may be brought to trial on outstanding charges in another jurisdiction, would be served by dismissing the charge against Ramirez.

Although we do not countenance the State's failure to comply with the provisions of the Agreement as to Cause 424, the State's failure does not warrant dismissal of this case. See Brown v. District Court, (1977) 194 Colo. 1225, 571 P.2d 1091 (detainer). Cf. Martin v. State, (1978) 176 Ind.App. 503, 376 N.E.2d 498 (extradition). This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him on Cause 424 before trying him in that cause. However, dismissal of the information is not the remedy. The trial court did not commit error in denying his motion to dismiss.

II

Ramirez, having raised at trial the defense of entrapment under I.C. 35-41-3-9 (Burns Code Ed., Repl. 1979), challenges the sufficiency of the evidence showing his predisposition to commit the crime. When the defense of entrapment is raised, the State must prove 1) the prohibited conduct was not the product of the persuasive efforts of law enforcement officials or 2) regardless of law enforcement efforts, the accused was predisposed to engage in the conduct. Marts v. State, (1982) Ind., 432 N.E.2d 18.

The question of predisposition, one of subjective intent, is for the trier of fact. Voirel v. State, (1980) Ind.App., 412 N.E.2d 861. Our standard of review of sufficiency of the evidence to support a finding of predisposition, as on all sufficiency of the evidence questions, is clear. We will not weigh conflicting evidence nor judge the credibility of the witnesses. Rather, we will look to the evidence most favorable to the State, together with all reasonable inferences which may be drawn therefrom. If there is evidence of probative value to support the decision of the fact finder, the conviction will not be disturbed. Everroad v. State, (1982) Ind., 442 N.E.2d 994. Predisposition may be established by circumstantial evidence. Voirol v. State, 412 N.E.2d at 863.

Here, the evidence reveals a Kokomo police informant, Bruce Hamlin (Hamlin), was approached by Ramirez in January

1979 during Hamlin's employment as a courthouse janitor. Ramirez inquired if Hamlin would be interested in selling some controlled substances for him. Subsequently, on January 28, 1979, at Hamlin's residence, Ramirez sold Hamlin a number of tablets later determined to contain diazepam and phenobarbitol. This buy was not controlled by law enforcement officers and Hamlin paid for the drugs with his own money. He was later reimbursed when he turned the tablets over to the police.

On March 9, 1979, Hamlin, who had been searched and wired for sound by the police, purchased fifty (50) methaqualone, diazepam, and phenobarbital tablets from Ramirez. The police monitored this purchase. No money passed to Ramirez at this time because the transaction was a "front" deal with payment to be made at a later date. On March 12, 1979, again searched and wired for sound, Hamlin paid Ramirez $100 owed for the tablets received on March 9.

Later in the day on March 12, 1979, Hamlin, again searched and wired for sound, purchased an additional fifty tablets containing methaqualone, diazepam, and phenobarbital from Ramirez. The deal was again "fronted" and the tablets were not paid for by Hamlin until March 20, 1979. When Ramirez was arrested pursuant to warrant on March 20, 1979, he was

found in possession of five of the $20 bills the police had given Hamlin to pay for the tablets received from Ramirez on March 12, 1979.

Ramirez contends that because he was not found to possess any additional controlled substances at his arrest and because the evidence shows Hamlin instigated the purchases on January 28, 1979, March 9, 1979, and March 12, 1979, his conviction must be reversed. Ramirez contends he was not predisposed to sell the controlled substance and was thus entrapped as a matter of law. Ramirez is incorrect.

Although the actual purchases were instigated by Hamlin, the evidence shows it was Ramirez who, unsolicited, first approached Hamlin with the suggestion Hamlin sell drugs which Ramirez would supply. Further, the evidence shows not an isolated sale, but a series of transactions in controlled substances between Ramirez and Hamlin. This evidence, albeit circumstantial, is sufficient to support the jury's determination Ramirez was predisposed to sell a schedule IV controlled substance.[4/] See Silva v. State, (1980) Ind.App., 410 N.E.2d 1342 (multiple sales to officers as one circumstance tending to show predisposition).

Ramirez also argues Hamlin's testimony was inherently unbelievable because he was a police informant against whom

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4/ The record also contains testimony of another individual to whom Ramirez had been selling schedule IV controlled substances shortly before Ramirez's arrest in March 1979. Ramirez had also inquired whether this individual "could get rid of some of them," i.e., sell some of the substances, for Ramirez. Record at 917.

charges were pending at the time of the transactions with Ramirez. We disagree. Hamlin's veracity was certainly open to question. However, the record shows the jury was made aware of his criminal history and the possibility of benefits flowing to him in exchange for information he provided and his testimony. The jury, who was in a better position than we to pass upon his credibility, apparently chose to believe Hamlin. We cannot say no reasonable person would have reached that conclusion. Bentley v. State, (1981) Ind., 414 N.E.2d 573.

III.

Ramirez contends the trial court erred in ordering his sentence for dealing in a schedule IV controlled substance, Cause 424, and his sentence for dealing in marijuana, Cause 470, to be served consecutively. Having failed to object at the sentencing hearing or to raise the issue in his motion to correct errors, Ramirez necessarily claims this sentencing error is fundamental error.

I.C. 35-50-1-2 (Burns Code Ed., Repl. 1979) provides:

> "(a) Except as provided in subsection (b) of this section, the court shall determine whether terms of imprisonment shall be served concurrently or consecutively.
> (b) If a person commits a crime:
> (1) After having been arrested for another crime; and
> (2) Before the date he is discharged from probation, parole, or a term of imprisonment imposed for that other crime;
> the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed."

Ramirez' argument is twofold. He first contends he was improperly sentenced under I.C. 35-50-1-2(b), the subsection making consecutive sentencing mandatory in certain enumerated situations. He argues his situation does not fall within subsection (b) of the statute with the result his sentence was outside the scope of statutory authority and therefore was fundamental error. We agree with Ramirez that sentencing without statutory authority produces fundamental error. See Rihl v. State, (1980) Ind.App., 413 N.E.2d 1046 (prior law vesting authority in trial judge to impose consecutive sentences only where statutorily authorized).

The record of the sentencing hearing shows the sentences for the two crimes were pronounced at the same time. The record further shows the trial judge did not disclose his reasons for imposing consecutive terms. However, Ramirez admits in his brief he was free on bond on Cause 424 when he committed the crime charged in Cause 470, dealing in marijuana.

Ramirez argues that I.C. 35-50-1-2(b) requires mandatory consecutive sentences only where a defendant is on parole, probation or serving a term of imprisonment at the time he commits a second offense. Therefore, because he was out on bond and not on probation or imprisoned, Ramirez argues subsection (b) is inapplicable to him.

Initially, we note the statutory language does not require a defendant to be "on" parole, probation or serving

a term of imprisonment. Rather, the statutory language speaks of a person who commits a crime during the time period 1) after he is arrested for another crime, and 2) before he is discharged from probation, parole or imprisonment for that other crime. If the legislature had intended the circumstances under which consecutive sentences are mandatory to be limited to the time a defendant is on parole, probation, or imprisoned, it is not readily apparent why it included the "after having been arrested" language.

Ramirez directs our attention to the predecessor statute, I.C. 35-8-7.5-1 (Burns Code Ed., Supp. 1977), which specifically addressed the issue of a defendant who committed a crime while released on bond on a previous charge. Ramirez argues the repeal of this statute and the substitution of I.C. 35-50-1-2(b) evidences the legislative intent to exclude commission of a crime while out on bond as an instance where consecutive sentences are mandatory. We disagree. See Governor's Conference on the Indiana Penal Code (1977) at 142 (interpreting I.C. 35-50-1-2 as follows: "The court may impose consecutive sentences if a person commits a second crime while released on bail, probation, or parole, or while confined or an escapee from confinement. Otherwise, the court has discretion as to whether to impose consecutive or concurrent sentences for 2 or more crimes.") See also Chandler v. State, (July 26, 1983) Ind. No. 1182 S 430 (crime committed while escaped from incarceration; concurrent sentences reversed because consecutive sentences mandatory). Contra Garrett v. State, (1980) Ind.App., 411

N.E.2d 692 (escape).

Ramirez cites Haggard v. State, (1983) Ind., 445 N.E.2d 969, to support his view. Although at first blush some of the language appears to support his position, a careful reading of Haggard reveals the Supreme Court was not interpreting I.C. 35-50-1-2(b) but was simply holding the fact scenario in Haggard rendered the mandatory provision of the statute inapplicable.[5/] Thus, in imposing consecutive sentences in Haggard, the trial court was operating at its discretion as authorized by I.C. 35-50-1-2(a), not by law as provided in I.C. 35-50-1-2(b).

However, even assuming Ramirez is correct in his contention his situation does not fall within subsection (b) of the statute mandating consecutive sentences, the trial judge was not without authority to order consecutive sentences in this case. Subsection (a) of I.C. 35-50-1-2 endows a trial court judge with discretion in ordering consecutive or concurrent sentences in all situations not enumerated in subsection (b).

Thus, Ramirez' second argument, that the judge committed fundamental error in failing to articulate his reasons for imposing the consecutive sentences, is a contention the trial judge abused his statutory discretion. Although such an abuse of judicial discretion is erroneous, see Brown v. State, (1982) Ind., 442 N.E.2d 1109; Taylor v. State, (1982) Ind.,

5/ In Haggard v. State, (1983) Ind., 445 N.E.2d 969, the trial court ordered the defendant's commitment to be served consecutively to a commitment for offenses in another county. However, the crimes which resulted in the two commitments were all part of the same transaction. Therefore, factually, I.C. 35-50-1-2(b) Burns Code Ed., Repl. 1979) was inapplicable because an arrest did not intervene between the series of offenses that resulted in the two commitments.

442 N.E.2d 1087, it does not rise to that level of errors deemed to be fundamental. Therefore, having failed to raise this error at the appropriate time, Ramirez has waived it.[6/]

IV.

Ramirez' final contention is the trial court erred in failing to grant him 322 days credit time for the time he spent in the Howard County, Indiana jail awaiting trial and sentencing in Cause 424 and Cause 470. The 322 days represent the time between the date of his return to Indiana from his incarceration in Michigan and the date of his sentencing in Cause 424 and Cause 470. Citing Burnett v. State, (1982) Ind., 439 N.E.2d 174 and Dolan v. State, (1981) Ind.App., 420 N.E.2d 1364, Ramirez contends the 322 days should be credited to the aggregate of the consecutive sentences he received in Cause 424 and Cause 470.

The State argues because Ramirez apparently received credit against his Michigan sentence for the days he was in

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6/ In any event, reviewing the record we find in the presentence investigation report numerous aggravating circumstances which would justify imposing consecutive sentences. Given the opportunity by advisement in the motion to correct errors, the trial court easily could have provided a statement of aggravating circumstances justifying imposition of consecutive sentences. Thus, according to our Supreme Court in Beasley v. State, (1983) Ind., 445 N.E.2d 1372, the error alleged by Ramirez is not fundamental (inadequate statement of aggravating circumstances to enhance sentence).

the Howard County Jail awaiting trial and sentencing on the Indiana drug charges,[1] he is not entitled to also receive credit time for those days in Indiana. The State is incorrect. There is no indication the sentences in Cause 424 and Cause 470 were to run consecutively to the Michigan sentence. Because the Michigan and Indiana sentences must therefore be assumed to be concurrent, it would appear Ramirez was entitled to have the 322 days credited to both his Michigan sentence and to the aggregate of the two Indiana sentences. See Simms v. State, (1981) Ind.App., 421 N.E.2d 698; Dolan v. State, 420 N.E.2d 1364 (interpreting I.C. 35-30-6-3 (Burns Code Ed. Repl. 1979)).

However, our review of the record of the proceedings has apprised us the credit time situation is more complicated than the parties' arguments have made it appear. Although not discussed by the parties, the record reveals that in calculating Ramirez' credit time the trial court considered a third Indiana sentence, one arising as a result of a conviction of theft under

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1/ The Agreement on Detainers, I.C. 35-2.1-2-4, Article 5(f) provides that when a prisoner is in the temporary custody of a requesting state, time being served on the prisoner's sentence in the sending state shall continue to run.

Cause 427. It appears from the dialogue between the trial judge and Ramirez' attorney at the sentencing hearing that the 322 days were to be credited to Ramirez' theft sentence. Record at 1038. However, there is nothing in the record presented us to indicate the 322 days actually were credited to the theft sentence or to indicate whether the theft sentence was to be served consecutively or concurrently with the drug sentences. Therefore, although the law favors Ramirez' position, we lack sufficient factual data to enable us to apply the law.

Thus, we remand to the trial court with instructions to conduct a hearing to recalculate Ramirez' credit time as applicable to Cause 427 (theft) as well as to Cause 424 and Cause 470 (drug charges).[8/] In all other respects, the trial court's decision is affirmed.

Buchanan, C. J., concurs.

Sullivan, J., concurs.

8/ The trial court's reconsideration on remand should include an additional factor. Ramirez argues his bail bond in Cause 424 was released two days after his return to Indiana from Michigan. Thus, he contends, there is no doubt his presence in the Howard County Jail was "as a result of" the charges pending in Cause 424. The record presented us in Cause 424 does indeed indicate a bond was released, but the bond is described as an "appeal" bond. Record at 6, 160. Further, the record of the sentencing hearing indicates the bond released was the appeal bond issued in the theft case, Cause 427. The status of bond, if any, in Cause 424 and Cause 470, is not clear from the record. Because the bond status may affect the credit time calculation, see DeWees v. State, (1983) Ind.App., 444 N.E.2d 332, the trial court's reconsideration on remand should include this issue.

APPENDIX "C"

STATE of INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE H. O'LAUGHLIN, CLERK
217 STATE HOUSE

INDIANAPOLIS, 46204

TELEPHONE 633-1930

No. PS 518

Patrick Ramirez V. State of Indiana

You are hereby notified that the Supreme Court

has on this day Appellants petition to Transfer is hereby Denied, DeBruler, A.C.J. Without Opinion.
All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 11 day of May, 1984.

Marjorie H. O'Laughlin
Clerk Supreme Court and Court of Appeals

5/11/84 ʃ TD

No. PS 518

Patrick Ramirez, Greencastle
Linley E.Pearson,Atty.Genl.

I hereby acknowledge receipt

of the above notice

Signature

Date ____, 19____

Attorney for ☐ Appellant
☐ Appellee

A-22

PLEASE RETURN THIS PORTION TO THE CLERK'S OFFICE

APPENDIX "A"

STATE OF INDIANA

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE N. O'LAUGHLIN, CLERK
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INDIANAPOLIS, 46204

TELEPHONE 232-1930

No. 75 S12

Patrick Ramirez v. State of Indiana

You are hereby notified that the Court of Appeal has on this day Issued the enclosed Opinion.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 7th day of Dec. 19 75

Marjorie N. O'Laughlin
Clerk Supreme Court and Court of Appeals

10/26/53 j- DP

No. 75 S12

Patrick Ramirez, Pres Castle
Linley E. Pearson, Atty. Gen.

I hereby acknowledge receipt of the above notice

_____, 19___

Attorney For _____

Return This Portion

84-5059

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ex rel., PATRICK RAMIREZ,

Petitioner,

-vs-

STATE OF INDIANA,

Respondent,

CAUSE NO. _____

AFFIDAVIT OF MAILING AND CERTIFICATE OF SERVICE

I, Patrick Ramirez, who being first duly sworn upon my oath, depose and say that on this 5th day of July, 1984, I served a true and correct xerox copy of the following-listed documents, by first-class, postage prepaid, first-class, United States Mail, upon the Honorable Linley Pearson, Indiana Attorney General, 219 State House, Indianapolis, Indiana 46204:

(a) Motion for Leave to Proceed in Forma Pauperis and Affidavit in Support of Motion for Leave to Proceed in Forma Pauperis;

(b) Motion for Appointment of Counsel;

(c) Petition for A Writ of Ceritorari to the Indiana Court of Appeals and Appendix; and,

(d) Affidavit of Mailing and Certificate of Service.

I further state that on the above-mentioned date, I filed one origina type written copy of each document listed above with the Clerk of the United States Supreme Court, via certified, postage prepaid, return-receipt requested, United States Mail.

Patrick Ramirez
Petitioner pro se

Subscribed and sworn to before me this 5 day of July, 1984.

Notary Public

MY COMMISSION EXPIRES ON:

Oct 26th 1984
Month Day Year

County of Residence